STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of Brian Jack Schultz and Lola Alexandra Schultz, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LAN YING TAN SCHULTZ,

Respondent-Appellant.

UNPUBLISHED
January 22, 2002

No. 230694
Wayne Circuit Court
Family Division
LC No. 96-337381

Before: Hood, P.J., and Murphy and Markey, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Respondent first argues that the trial court abused its discretion in allowing hearsay evidence regarding the presence of the children's father in the home. The record discloses that respondent did not object to any of the specific testimony that she now claims constituted improper hearsay. Accordingly, this issue is not preserved, thus limiting any appellate review to plain error. *In re Snyder*, 223 Mich App 85, 92; 566 NW2d 18 (1997).

We find it unnecessary to determine whether MCR 5.974(E) required that only legally admissible evidence be introduced at the termination proceedings, because there was sufficient nonhearsay and admissible evidence establishing the father's presence in the home. See *Id.* at 91; see also *In re Gilliam*, 241 Mich App 133, 137; 613 NW2d 748 (2000). Respondent's contention that a psychologist told her that respondent and the father could together care for the children does not explain why the father was caring for the children at the time the psychologist first visited the home. Throughout the proceedings below, respondent was specifically directed not to allow the father, whose parental rights were previously terminated, to be present around the children, and respondent failed to do so.

Respondent next claims that she was denied due process because a substitute judge presided at the hearing on the supplemental petition to terminate her parental rights. Because respondent failed to raise this issue in the trial court, we review this claim for plain error. *In re*

Snyder, *supra* at 92. The affidavit submitted by respondent explaining the reason for a different judge is not properly before us. *Amorello v Monsanto Corp*, 186 Mich App 324, 330; 463 NW2d 487 (1990). While respondent cites several statutes and court rules in support of her due process argument, we are not persuaded that the cited statutes or court rules have any relevancy to respondent's due process argument, nor has respondent otherwise established that she was deprived of due process. No fundamental unfairness has been shown. *In re Brock*, 442 Mich 101, 111; 499 NW2d 752 (1993).

Respondent next claims that her attorney was ineffective. Limiting our review to the available record, *People v Avant*, 235 Mich App 499, 507; 597 NW2d 864 (1999), we conclude that respondent has shown neither deficient performance nor the prejudice required to establish ineffective assistance of counsel. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000); *In re Ayres*, 239 Mich App 8, 23; 608 NW2d 132 (1999); *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988).

Respondent next claims that the trial court's decision to terminate her parental rights was not supported by clear and convincing evidence. Limiting our consideration of this issue to the argument presented, we are satisfied that clear error has not been shown. MCR 5.974(I); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Finally, respondent claims that the evidence failed to establish that termination of her parental rights was in the best interests of the children. Under MCL 712A.19b(5), the appropriate inquiry is whether the evidence established that termination was clearly not in the children's best interests. Having considered respondent's claim in this context, we conclude that respondent has failed to demonstrate that the trial court clearly erred in terminating her parental rights. *In re Trejo*, 462 Mich 341, 351-352; 612 NW2d 407 (2000).

Affirmed.

/s/ Harold Hood
/s/ William B. Murphy
/s/ Jane E. Markey